

H-2015, P-513/PA-90-628 ORDER APPROVING TRANSFER OF SHARE OF  
DANUBE STOCK

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson  
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Patrice M. Vick

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Joint  
Petition of Danube Telephone  
Company and Telephone and Data  
Systems, Inc. for Approval of  
the Acquisition of a Majority of  
the Outstanding Shares of Stock  
of Danube Telephone Company by  
TDS Telecommunications  
Corporation, a Wholly-owned  
Subsidiary of Telephone and Data  
Systems, Inc.

ISSUE DATE: September 26, 1991

DOCKET NO. H-2015, P-513/PA-90-  
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SHARE OF DANUBE STOCK

**PROCEDURAL HISTORY**

Danube Telephone Company (Danube) is a Minnesota corporation providing local exchange service to approximately 430 customers in the Danube service area of southern Minnesota.

Telephone and Data Systems, Inc. is a telephone holding company which owns and operates approximately 80 independent telephone companies in 27 states. TDS Telecommunications Corporation (TDS) is a wholly-owned subsidiary of Telephone and Data Systems, Inc.

Danube and TDS reached an agreement in which TDS would acquire a majority of the outstanding shares of Danube stock. TDS made an offer to Danube stockholders to buy Danube shares through the exchange of TDS common stock, or in the alternative by paying \$13,350 per share. On August 28, 1990, Danube filed a joint petition seeking Commission approval of the acquisition.

On December 27, 1990, the Department of Public Service (the Department) filed its Report and Recommendation. During its investigation the Department had found that allegations of insider trading of Danube stock were under investigation by the Minnesota Department of Commerce and the Renville County Attorney. Certain former holders of Danube stock alleged that in February of 1989, before negotiations with TDS took place, certain Danube officials and their families had acquired stock from individuals without revealing significant "insider" information which would have influenced price.

Additional documents filed with the Commission indicated that nine former Danube shareholders had filed a civil suit in U.S. District Court in Minneapolis against officers of Danube Telephone Company as well as the Americana Bank of Danube. Becker et al v. Americana Bank of Danube et al, Civil Action No. CV4-90-777. The plaintiffs in the action alleged that the defendants had violated federal and state securities law as well as the federal racketeering law, and had committed common law fraud.

On January 31, 1991, the Commission issued its ORDER APPROVING ACQUISITION OF DANUBE STOCK BY TDS EXCEPT FOR CERTAIN SHARES. In that Order the Commission separated outstanding shares of Danube stock into two categories: shares which were not subject to dispute and twelve Disputed Shares. The twelve Disputed Shares were subject to investigation, civil suit, or both. The Commission allowed the immediate transfer of nondisputed shares, but required that safeguards be implemented with the transfer of any Disputed Share.

On February 19, April 16, August 1 and August 21, 1991, the Commission issued various Orders approving the transfer of a total of nine Disputed Shares.

On August 12, 1991, a petition was filed with the Commission requesting removal of Disputed Share status from a share which had been part of the District Court proceeding. The petition was filed on behalf of Mr. Gary Kurtz, who had previously purchased a share of Danube stock from Ms. Mabel Kleinhuizen. Ms. Kleinhuizen had alleged in the court proceeding that the share had been obtained fraudulently. After negotiations between the parties, Ms. Kleinhuizen and Mr. Kurtz executed a Stipulation of Dismissal with Prejudice and Agreement and Covenant Not to Sue. Under the terms of the agreement, Mr. Kurtz conveyed \$3,600 of the proceeds of the Disputed Share to Ms. Kleinhuizen. Ms. Kleinhuizen in turn agreed to dismiss her claim against Mr. Kurtz. Copies of the Stipulation and Agreement were submitted to the Commission, along with the petition for removal of Disputed Share status.

The matter came before the Commission on September 10, 1991.

### **FINDINGS AND CONCLUSIONS**

In its January 31, 1991 ORDER APPROVING ACQUISITION OF DANUBE STOCK BY TDS EXCEPT FOR CERTAIN SHARES, the Commission set the following requirement for the transfer of Disputed Shares:

    Holders of stock which has been subject to investigation or litigation referred to in the body of this Order, who wish to transfer their shares following resolution of the investigation or litigation, must petition the Commission for approval to transfer said shares.

In this case, the share of stock has been subject to the litigation referred to in the Order, the federal district court proceeding. The owner of the share, as acknowledged by the district court's acceptance of the parties' Stipulation and Agreement, is Mr. Kurtz. Because Mr. Kurtz wishes to transfer his share of stock to TDS, he is properly before the Commission with a petition for approval to transfer.

The Commission finds that it is in the public interest to remove Disputed Share status from the share. The Commission has monitored the transfer of this share while its rightful ownership was in question. There are no longer issues of ownership or value before any court, nor is the ownership of the share under investigation by any authority. The Commission safeguards are no longer necessary. The Commission will approve the removal of Disputed Share status from this share. It may now be freely transferred.

#### **ORDER**

1. The Commission approves the removal of Disputed Share status from the Kurtz share as explained in this Order.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)